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ABSTRACT

Three basic issues of day care licensing are dealt with in this paper. These are: (1) Should day care licensing be statutority separate from other child care licensing programs? (2) Where should day care licensing be administratively located? and (3) How much of the safeguarding and upgrading of service can licensing carry in relation to possibly other regulatory programs that might be implemented? The study shows that the differential attitude towards the function of day care and day care licensing was forcibly brought out in a recent research program. It is concluded that as a cultural difference exists as to the function of day care licensing as compared to 24-hour foster care licensing, there would seem to be much operational valor in achieving separability. With respect to the second issue, currently licensing responsibility is carried out mainly by state or state-local departments of public welfare. It is concluded that the possible assignment of day care licensing to state health departments is preferable if there is any possibility of health departments developing a dynamic division of maternal and child health. With respect to the third question, attention is called to accreditation programs under public or private (voluntary) auspices. The Child Welfare League of America is a good example of how a voluntary accreditation agency can go beyond the public licensing authority. It is concluded that a cooperative program in which the public agency licenceses a center and a private one goes beyond the minimum safeguards would be the best solution. [Not available in hard copy due to marginal legibility of original document.] (CK)

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BASIC ISSUES IN DAY CARE LICENSING

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One of the most socially significant facts in twentieth century America is the ever-increasing amount of out of home care of children. Day care constitutes by far the major amount of this out of home care, much of it deriving from the fact of the increased number of working mothers. Whether this out of home care proves to be a positive or negative experience--both for child and society--relates to two primary determinants: the quality of the day care operation and the implementation of proper regulatory safeguards of which licensing is perhaps the basic program but not the only form of regulation.

I

This paper deals primarily with three basic issues of day care licensing but before coming to them, a brief prefatory comment on the history of day care licensing might be in order. It is this: compared to twenty-four hour foster care--either institutions or foster homes--day care licensing would seem to be a Johnny-come-late to child care regulation. Now this lateness in day care licensing has proved to be both good and poor. The goodness derives from the fact that day care licensing has profited from the refinement of child care licensing that has been going on for the past third of a century; that is, since the

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1935 Social Security Act made federal funds available to the states for child welfare service operations including licensing. The negative of this late development is that although day care and day care licensing has many points of similarity with other forms of child care it also has many differences. Yet, there is much evidence to suggest that these differences have not been recognized in the formulation of day care licensing acts. Figuratively speaking, day care licensing seems to have been "jammed" into the standard child care licensing mold regardless of fit or appropriateness. To undo, possibly, some of the mistakes in previous day care licensing, constitutes one of the primary teaching and learning aims of this paper.

II

It would seem that if day care is going to be validly and responsibly regulated by the state, three basic questions must be raised and dealt with. The three questions are: 1) Should day care licensing, particularly group day care including centers, have a separate licensing law and operation distinct from other forms of child care licensing? 2) Where should day care licensing be administratively located? 3) How much of the safeguarding and upgrading of service can licensing carry in relation to possibly other regulatory programs that might be implemented? Each of these will be dealt with for the purpose of initially clarifying the issue--not to give a final answer.

1. <u>Should Day Care Licensing be Statutorily Separate From Other Child Care Licensing Programs</u>

   At first glance, it might seem that a good case can be made either for or against the separation depending in part upon one's vested interest. Fuller consideration or analysis

points up, however, a number of intrinsic differences in the operational function as well as the cultural attitude towards day care that would seem to make a separability in regulation. For example: In twenty-four hour foster care, there is a child protective function which theoretically as well as empirically is not present in day care. Twenty-four hour foster care is truly <u>substitute</u> parental care. Both the licensing authority and the placement agency, if present, must take on a protective role. This protective role plus, in some instances, a sort of social advocate function does not tend to develop in day care operations. Generally speaking, the parent or responsible adult using day care not only sees and has the child before and after care each day but has daily contact with the service and is in a position to make certain observations and to confront the operator and/or staff regarding possible inappropriate care--if it's recognized. Also, it is to be noted that the day care operator is in a sense more economically related to the parent in day care operations than in twenty-four hour foster care, especially when the child has been placed by an agency that makes the payments. In fact, there is reason to believe that most or a large majority of adult users perceives the function of day care to be fundamentally different from twenty-four hour care. Instead of seeing it as substitute parental care, it is regarded only as a supplementary and/or complementary service; that is, as an extension of their own care and responsibility.

The differential attitude towards the function of day care and day care licensing was rather forcibly brought out in a

recent research program carried out at our School of Social Work (University of Southern California) by three excellent master degree students. They interviewed forty middle-class mothers of various ethnic backgrounds as to how they perceived the function of day care licensing. All the mothers knew something about licensing and all felt positive about its general safeguarding function, especially as to life-safety aspects and its "checking on the character of the operator and staff." But in many instances, this is also where the perception ended as to the licensing function. To such questions as "Should the licensing worker check on or supervise the day care program?" or "What should the licensing authority do as to the socialization aspect of day care?", the reply of the overwhelming majority was to the effect that this was not a function of the licensing agency. With much statistical frequency, a rejoinder was added such as "This is not necessary, don't I see the child and the facility every day myself?"

Perhaps one might speculate that some mothers who saw no need for the regulatory agency to function in this latter manner were "compensating for guilt" over working and it represented their way of reassuring themselves that they were still assuming full responsibility for their child's development. But, regardless of the dynamics for this attitude, the findings from this study and other observations leads to the conclusion that there is a cultural difference as to the function of day care licensing as compared to twenty-four hour foster care licensing. Thus, to the extent that this is a correct observation, there would

seem to be much operational valor in achieving a separability in the statute as well as in the form of standards and perhaps in the administrative location of the licensing responsibility. This last, administrative location, leads to the next basic issue.

2. Where Should Day Care Licensing Be Adminstratively Located?

Currently, although there are a few exceptions, mainly health departments, statutorily the day care licensing responsibility is administratively handled by state or state-local departments of public welfare which also tend to have certain other child welfare responsibilities including twenty-four hour foster care licensing. It is also important to note that most of these public welfare agencies have the administration of financial assistance programs and it is the financial assistance program probably which the man-on-the-street associates with the public welfare department. In fact, in many instances this man-on-the-street is surprised to learn that there are child welfare programs in the "welfare department."

Day care and day nursery licensing coming historically later, at least in many instances, seems to have been assigned to the same licensing authority having responsibility for twenty-four hour foster care licensing without too much community or legislative consideration or discussion taking place. This is, perhaps, explained in part due to the fact that day care as a community service has tended to expand during periods of crisis--economic or military. During the 1930's depression, day care programs developed as a part of the W.P.A. This

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development was motivated to a great extent to put people to work and their regulation was probably not of major community concern. Then came World War II and the Lanham Act which historically universalized day care and established the pattern of federal funding. While there was concern at this time, their regulation was certainly not the most pressing during this emergency period especially as to the problem of where it should be administratively located. During the post World War II years, day care continued to expand--but in a lagging fashion--with the tremendous increase in the number of working mothers. But again, questions around day care licensing probably seemed minor in comparison to "big post war problems" such as economic adjustment and inflation, racism and civil rights, just to mention a few. So, the question of administrative location remained. However, now there is somewhat of a location crisis precipitated by the imminent passage of the Family Assistance Plan which will facilitate and/or precipitate reorganization of state welfare departments.

Hopefully, the "shot gun wedding" of uniting child welfare programs with public assistance programs into state departments of public welfare which took place following the 1935 Social Security Act will be undone! To continue this hope, perhaps there will emerge a system of state department of social services for family and children somewhat along the lines that Illinois has already pioneered. (Parenthetically, it might be noted that Illinois has had a somewhat long history of separating social service administratively from public assistance.)

Should these state or state-local departments of family and children welfare services become a reality, then it would seem that day care licensing might well be assigned to these new departments. But if politics, taxpayers associations, and reorganization efficiency experts hold sway and state child welfare services are continued departmentally with economic assistance programs, then it would be the writer's opinion that day care regulation might more validly be administratively located in some other department such as health or possibly a newly established "independent" office of child development. This new type of office of child development would at least have a separate formative existence and only at a later date be transferred to an appropriate department, or expanded into a new public department.

At this time, the possible assignment of day care licensing to state health departments would seem preferable if there is <u>any possibility of health departments developing a dynamic division of maternal and child health</u>. The writer's observation of day care regulation by the Ministry of Health in England rather than by the Home (Welfare) Office were of a favorable nature and lead to a belief that health departments in this country might have a potential for day care regulation, <u>especially family day care</u>, which has not been fully explored or considered. State and local health departments have two things going for them in respect to regulatory functions which tend to be lacking in present day public welfare: 1) They have a good community image which seems to be most important in

respect to securing support for a program like licensing; and 2) They have a long history of the administration of programs carrying considerable authority and regulatory power.

Before considering the possibility of assigning day care licensing to new offices of child development, a statement should be made as to why not department of education. To those who believe that the department of education should play a much greater role in respect to day care including extended day care, it may follow that they will hold that the department of education likewise should have the regulatory function of day care provided under private auspices. Such a position is perhaps theoretically sound but the history of the departments of education in respect to exercising regulatory power especially in respect to private school would not presently argue for their having the day care licensing function assigned to them. Given this failure in regulatory achievement plus the financial crisis in public education, it would be only the exceptional situation where the department of education might be expected in reality to take on a day care regulatory function with "vim and vigor."

Although perhaps as unrealistic to the immediate present, a possible development of independent offices of child development separate, at least in their initial development from the traditional departments of welfare, health and education might be the best locale of day care licensing responsibilities. Such an office of child development would, of course, be multi-functioned--carrying among other responsibilities those of implementing community organization programs for child development

services, formal and informal educational programs of child development, possibly the operation of child development community clinics or parents' consultation service and possibly the licensing and/or accreditation of child development personnel. Thus, the assignment of day care licensing would be appropriate-- "a natural." Also, such an office of child development might play an important role in advising or certifying day care services in relation to "purchase of service" by public agencies using state or federal funds.

Finally, in respect to the administrative location of day care licensing, passing attention needs to be called to what may well be an ominous regulatory development. It is the proposal that is popping up in many parts of the country that there may be one "big" licensing agency which would have all or most of the responsibility for implementing any state licensing program <u>regardless of function</u>! The advocacy of a big licensing office crisis results from many factors, but the tremendous increase in regulatory programs is no doubt the major one. It is granted that the problem of multiplicity of regulatory programs and agencies needs to be dealt with but in the opinion of the writer the proposal at hand is not the best answer to the situation. In fact, seldom does a simplistic answer solve a complex problem. Certainly much of the criticism of too many regulatory programs and agencies may be lessened by a refinement of state administrative acts and well staffed administrative procedure agencies. However, if this simplistic answer prevails, and regulatory levithians are set up, there

is a real likelihood that day care licensing will be "a sitting duck" to be shot at for immediate inclusion. This will be most unfortunate for children, for parents, positively motivated operators and staff and the community in general.

3. How Much In The Way of Safeguarding and Upgrading of Day Care Can Be Achieved With Licensing?

It is important to remember that licensing is not the only type of regulatory administration accreditation programs that may--usually--go beyond licensing requirements and thus provide additional safeguards as well as upgrading the program need to be seriously considered. These accreditation programs may be under public or private (voluntary) auspices. To take an example away from the child care field (and, perhaps, the best known accreditation programs with achievement of considerable magnitude) is the system of national boards of medical specialities such as pediatrics, psychiatry, etc. These national boards ("academies," etc.) set standards for practice in a particular medical field, engage in test construction and test administration and certify that certain persons have met the standards of the board. The medical accreditation agencies go far beyond what is possible to achieve under the medical licensing authority.

Coming back to child care, the Child Welfare League of America is a good example of how a voluntary accreditation agency can go beyond the public licensing authority. In calling attention to these two examples of accreditation that are both private or voluntary in nature, it does not imply that such accreditation could not also be under public auspices. In fact, it

would be quite possible for a child care regulatory agency which has the licensing responsibility to also certify--in respect to those voluntarily applying--to the fact that they have met special standards beyond the licensing function. In fact, this might not be too bad a way of dealing with "purchase of service" situations where a certification of a certain quality of care would justify the public paying a higher rate. However, in the long run it would seem that the ideal "arrangement" will be to have a complementary child welfare regulatory "package" in which the public agency licenses and the voluntary agency accredits--or goes beyond the minimum safeguards. The licensing requirements would be absolute "musts" in which there is widespread community participation (especially by the users of the service) in the formulation of standards, and thus should help assure the licensing authority support in enforcement operations. The accreditation standards, while also reflecting widespread community participation, would be also a par excellence means by which professional expertise could be "pipelined" into the regulatory standard.

III

The determination of the degree of separability of day care licensing from other forms of child care licensing, the best administrative location of day care licensing and the feasibility of complementary regulatory programs of day care licensing constitutes, in the opinion of the writer, the basic current issues of day care licensing. These are of great significance in respect to the regulation of day care which now

serves millions of children daily. Without proper resolution of these three major issues, the regulatory goals of safeguards and upgrading will not very likely be achieved. It has been well stated that structure is program destiny.

Now while the matter of family day care regulation is, at the moment not of comparable magnitude to these three primary issues, it might be well to make a postscript comment in respect to this particular form of day care. It is in order because there are many who believe that there has been a distressing lack of interest and development of good family day care. Should the advocates of this type of service prevail, then the regulatory aspect of it will take on correlative importance. Granting an expansion of family day care, or even an endeavor to do so, two regulatory problems arise. The first relates to the organizational affiliation of this type of service and the second as to what type of regulation is appropriate.

The organizational question can be summed up, technically, in this manner: Is family day care a "natural" affiliate of group day care? Some think not and say it is more closely related to twenty-four hour foster home care and should be operationally linked to that program. Others believe family day care should be organizationally separate from both group day care and twenty-four hour foster home care and that eventually large scale operations of family day care will be present. These family day care large scale operations will be somewhat analogous to traditional child placing. These agencies providing the family day care placing service might also take on other services including providing of consultation to parents using family day care. Other services would be of a supplementary parental care nature such as providing the transportation to the family day care facility, and even in an emergency

situation provide home care services when the child is not able to go to the family day care. Thus, insofar as family day care services are primarily and predominately operated apart from group day care then it would seem to follow that the administrative location of regulation family day care should reflect the separateness rather than deny it.

A second question that also needs to be raised if family day care expands greatly: Should it be licensed or would some other regulation be more suitable? The author of this paper believes that licensing of day care is not a preferred regulatory way of dealing with it.

Rather than a licensing approach to family day care it is proposed that there be a simple system of official registration of persons engaging or holding themselves out as ready to engage in family day care operations. It is believed that such a registration system would be both pragmatically feasible from the viewpoint of implementation and enforcement and in the long run would provide as much--if not more--safeguarding and upgrading of service than is achieved under licensing. (Parenthetically, it might be added that such a registration program could well work in conjunction with an accreditation service such as has been suggested above.)

To sketch only the elementary features of the registration system: The burden of applying would be upon the operator (this, of course, would require a large scale interpretation for the need of registration). The operator, at time of registering, would be notified of "standards" (not licensing requirements) which would have been set by the regulatory agency administering the registrative program. The applicant might be asked to state whether she or they believe they met state standards, or there might be a policy to the effect that operation imply a meeting of state standards but, again, it is important to stress that there be no

formal investigation at this time and the registrant would not accrue a "licensed status." The registrant might be subject to inspection which could result in various negative sanctions from "warning" of unsatisfactory operations to "orders of cease and desist" and, of course, unfavorable findings could always be referred to a child protective agency.

The pragmatic goals of such a registration-inspection approach would be at least two-fold: 1) The registration would result in a collectivity of names and addresses and types of services available which could be put in a directory and thereby increase knowledge of community resources and this, in turn, could contribute to epidemiological analysis for purposes of community planning in respect to day care services; and 2) the registration would provide a target group to which community educational programs could be directed including the published material relative to day care. An added value of even a very simple registration system might be its contribute to <u>responsible operations</u>. The very act of having to register is tantamount to a "holding out of oneself" to the community as taking on this role. Without registration, persons can "slide in and out" of family day care operations, with less thought or "ego" commitment.

This proposal of a registration system for family day care rather than a licensing approach is not put forth as a final answer to the regulatory problem. It is proposed only as a beginning step in order to bring the problem under community control for study purposes and to begin a universal program of dynamic education of day care generally, and family day care specifically.

In ending, it might be well to recall the old statement "many people act without knowing which results in failure and disappointment, but

a greater tragedy is to know and not act upon this knowledge." At an earlier day, due perhaps to crisis situation when day care policy formulations took place, we acted without knowledge or proper analysis of the situation. Today we have much more knowledge as to what is best in day care policy formulation. And it will surely be a great tragedy for both day care children and parents who use day care, if we do not have the courage to implement our knowledge and our experience rather than perpetuate the tradition and to proceed on a basis of <u>too little too late</u>!